IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 161 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SHREE SHANTINATH SILK INDUSTRIES - Appellant(s)
Versus
ASSISTANT COMMISSIONER OF INCOME - TAX - Opponent(s)

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Appearance :
MR SN DIVATIA for Appellant(s) : 1,
MR BB NAIK for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 02/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1 The appellant-assessee has proposed the following questions stated to be substantial questions of law:

> "*(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the disallowance of excise duty of Rs.77,24,844/- under section 43B of Income-tax Act,1961?*
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> *(ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in confirming the disallowance of excise duty liability of Rs.77,24,844/- under section 43B of the Income-tax Act,1961 in spite of the appellant having placed full amount of excise duty liability with Bank of Baroda in Fixed Deposit in pursuance of the order and direction of the*

Hon'ble Supreme Court of India and thus parted with funds equivalent to Excise Duty liability?

(iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that furnishing of bank guarantee against excise duty liability in pursuance of the order and direction of the Hon'ble Supreme Court did not tantamount "actual payment" within the meaning of Section 43B of the Act?

(iv)Whether, under the facts and circumstances of the case, the ITAT was right in law in not following the earlier decision of the ITAT in the case of Shanti Dyeing & Finishing Works and taking a totally contrary view without there being any conflicting decision of the ITAT, Ahmedabad Bench?"

2 Heard Mr.S.N.Divetia, learned Advocate for the Appellant and Mr.B.B.Naik, learned Standing Counsel for the respondent. It is an admitted position that in assessee's own case Tax Appeal No.8 of 2004 involving identical issue has been decided by an order of even date and the appeal has been dismissed.

3 In the circumstances, for the reasons stated in the order made in Tax Appeal No. 8 of 2004, as the issue stands concluded no substantial question of law arises. The appeal is dismissed. There shall be no order as to costs.

Sd/- Sd/-
(D.A.MEHTA,J) (H.N.DEVANI,J)

m.m.bhatt